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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,109	11/14/2003	Susan Chiu	33144-198785	8227
23639	7590	10/05/2005	EXAMINER	
BINGHAM, MCCUTCHEN LLP THREE EMBARCADERO CENTER 18 FLOOR SAN FRANCISCO, CA 94111-4067			TRAN, HANH VAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/712,109	CHIU, SUSAN	
Examiner	Art Unit		
Hanh V. Tran	3637		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 14 November 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 November 2003 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

1. This is the First Office Action on the Merits from the examiner in charge of this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, lines 24-26, the limitation "one distal end of the spring is securely connected to one of the first hooks and the other distal end of the spring is securely connected to the second hook of the moving block via the guiding recess" has already been recited on lines 17-19; thus renders the claim indefinite for failing to clearly define the metes and bounds of the claimed invention.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by US 2004/0227438 to Tseng et al.

Tseng et al discloses a track positioning device comprising all the elements recited in claim 1 including, such as shown in Figs 1 & 2, a positioning block 6 which includes a body with a positioning slot 62 defined therein, two opposite wings respectively formed on a side face of the body and an extending plate formed to connect to both of the wings, wherein each wing has a mounting hole to allow a securing element extend through the mounting hole and into the inner track to firmly connect the positioning block to the inner track, a stop is formed and extended into the positioning slot, a positioning hole 621 is defined in the body to communicate with the positioning slot, the extending plate has two plates respectively formed on opposite sides of the extending plate and a guiding recess is defined between the plate and the extending plate, two first hooks are respectively formed on opposite sides of the extending plate; a moving block 7 which has an extension 71 corresponding to the positioning slot 62 and the positioning hole 621 and a second hook formed on a side of the moving block; and a spring 8 which is provided between the positioning block and the moving block and has a first distal end securely connected to one of the first hooks and a second distal end to be securely connected to the second hook via the guiding recess. In regard to the whereby statement, it has been held that the functional "whereby" statement does not define any structure and accordingly cannot serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957).

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,712,435 to Kim et al.

Kim et al discloses a track positioning device comprising all the elements recited in claim 1 including, such as shown in Figs 2-8, a positioning block 46 which includes a body with a positioning slot 92 defined therein, two opposite wings respectively formed on a side face of the body and an extending plate formed to connect to both of the wings, wherein each wing has a mounting hole to allow a securing element extend through the mounting hole and into the inner track to firmly connect the positioning block to the inner track, a stop 104 is formed and extended into the positioning slot, a positioning hole 100 is defined in the body to communicate with the positioning slot 92, the extending plate has two plates respectively formed on opposite sides of the extending plate and a guiding recess is defined between the plate and the extending plate, two first hooks are respectively formed on opposite sides of the extending plate; a moving block, such as shown in Figs 5 & 7, which has an extension 108 corresponding to the positioning slot 92 and the positioning hole 100 and a second hook formed on a side of the moving block; and a spring which is provided between the positioning block and the moving block and has a first distal end securely connected to one of the first hooks and a second distal end to be securely connected to the second hook via the guiding recess. In regard to the whereby statement, it has been held that the functional "whereby" statement does not define any structure and accordingly cannot serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yang, Purja, Chu, Boks, Hollenstein et al, Brustle et al,

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Lautenschlager et al, Schroder, Roeck, and Roeck et al all show structures similar to various elements of applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hanh V. Tran
Art Unit 3637

HVT
October 2, 2005